

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.290 of 2000

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 13.05.1999 and 25.06.1999 respectively passed by the learned District Judge, Kalahandi-Nuapada at Bhawanipatna in Title Appeal No.26 of 1998 setting aside the judgment and decree dated 21.09.1998 and 25.09.1998 respectively passed by the learned Civil Judge, Senior Division, Bhawanipatna in T.S. No.55 of 1997.

State of Orissa, represented by the *Appellants*
Collector, Kalahandi & Others

-versus-

Sri Banamali Jal (Since Dead) by *Respondents*
his LRs

Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):

For Appellants - Miss.Samapika Mishra
Additional Standing Counsel

For Respondents - M/s.D.P.Dhal, S.K. Dash,
B.S.Dasparida
(Advocates)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 03.08.2022 : Date of Judgment:08.08.2022

D.Dash,J. The State-Appellants, by filing this Appeal under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 13.05.1999 and 25.06.1999

respectively passed by the learned District Judge, Kalahandi-Nuapada at Bhawanipatna in Title Appeal No.26 of 1998.

By the same, the Appeal filed by the present Respondent (Plaintiff), being the unsuccessful Plaintiff under section 96 of the Code, has been allowed and the judgment and decree dated 21.09.1998 and 25.09.1998 respectively passed by the learned Civil Judge, Senior Division, Bhawanipatna in T.S. No.55 of 1997 have been set aside. The Respondent (Plaintiff) being the unsuccessful before the Trial Court on being non-suited, he has been successful in the First Appeal in obtaining a declaratory decree that the order dated 23.08.1996 and subsequent orders passed by the Tahasildar, Kalahandi in Misc. Case No.3 of 1996 are illegal and the Appellants (Defendants) have been permanently enjoined from taking any legal action against the Respondent (Plaintiff) impeaching his right, title, interest and possession over the suit land.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiff's case is that in the year 1976, he being a landless person, applied for lease of Government land before the Tahasildar, Kalahandi. Accordingly, by the order passed in Lease Case No.34 of 1976, Patta had been granted to him leasing out Ac.0.300 decimals of land belonging to the State. The Plaintiff accordingly possessed the said land. It is stated that after grant of Patta to the Plaintiff, the record of right was corrected in the Hal Settlement Operation and the land was recorded in the name of the Plaintiff.

On 05.08.1996, the Plaintiff received the notice from the Tahasildar, Kalahandi calling upon him to show the cause as to why the

lease Patta granted him shall not be cancelled. The Plaintiff then denied the allegations made against him. The Tahasildar, after hearing, referred the matter recommending to the Collector through Sub-Collector for cancellation of the Patta issued in favour of the Plaintiff. It is said that said initiation of the proceeding by the Tahasildar is illegal. The Plaintiff, therefore, filed the suit praying therein to declare that said order passed by the Tahasildar recommending cancellation of the lease be held illegal and it be further held that the Defendants have no right to cancel the Patta issued in favour of the Plaintiff.

The Trial Court dismissed the suit in view of the bar contained in Section 7-B of the Orissa Government Land Settlement Act, 1962 (for short, 'the OGLS Act').

4. The Plaintiff thus being non-suited, having carried the Appeal, has been able to get those judgment and decree passed by the Trial Court reversed. The First Appellate Court has decreed the suit as aforestated.

5. The Appeal has been admitted on 10.01.2019 to answer the following substantial questions of law:-

“A. Whether the suit for permanent injunction restraining the Collector, Kalahandi, defendant no.1, from passing any order on the recommendation dated 23.8.1996 to the Tahasildar, Bhawanipatna, defendant no.3 is maintainable?;

B. Whether the plaintiff is entitled to the lease of the Government land having an area of three acres of land, when the plaintiff is a Government servant and is not a landless person?; and

C. In view of the bar contained in section 7-B of the OGLS Act, whether the suit for declaration of title is maintainable?; and

D. Whether the Collector, Kalahandi, plaintiff no.1, has jurisdiction to cancel the same, when the lease is granted not in conformity with the principles of the OGLS Act?"

6. Learned counsel for the State-Appellants submitted that in view of the bar contained in Section-7-B of the OGLS Act, the Trial Court having rightly dismissed the suit, the First Appellate Court has erred in law in taking a view to the contrary. It was submitted that for the purpose, the First Appellate Court has fallen in grave error by relying on a decision of this court in relation to a case where the bar contained under section 16 of the Orissa Prevention of Land Encroachment Act has been discussed and its scope has been outlined. According to her, the said decision in the case of State of Orissa –V- Bhanu Mali (Dead) Nurpa Bewa and others; 1996 (I) OLR 460 has absolutely no application to the case in hand. She further submitted that after the said order passed by the Tahasildar issuing Patta in respect of the suit land in favour of the Plaintiff, it being discovered that the Plaintiff had practiced fraud upon the Authority acting under the OGLS Act in falsely representing on the material facts which are the main criterias as to the eligibility of a person to be entitled to lease of public property; the move for cancellation as per law has been taken. She, therefore submitted that in the above backdrop the suit in the present form seeking the relief as prayed for ought to be dismissed as the provision of Section 7-B of the OGLS Act squarely comes into play and stand on the way of entertaining of such a suit that the functionaries under the OGLS Act cannot prevented from proceeding and for that reason the OGLS Act prescribes the forums to be knocked at for redressal of the grievances. She further submitted that the suit seeking permanent injunction restraining the Defendant No.1 from passing any order on the recommendation dated 23.08.1996 as made by Defendant No.3 is not

maintainable in the eye of law and the First Appellate Court has committed grave error in even passing such a decree restraining the statutory authority to act in terms of the statute and in consonance with the power provided thereunder.

7. Learned counsel for the Respondents submitted that the proceeding for cancellation being barred as having not been initiated within the period of fourteen years of grant of lease, the First Appellate Court cannot be said to have committed any mistake in decreeing the suit.

In response to the above, learned counsel for the Appellants submitted that here the Plaintiff having practiced fraud upon the Authority and having mis-represented the material facts, which have persuaded the Authority to pass the order of lease in his favour, the question of limitation even as per the provision as it stood prior to the year 2013 would not stand.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. In the fitness of the things, this Court feels that as the substantial questions of law as at A and C touch upon the root of the matter, that be answered first.

9. Admittedly, the Plaintiff having made an application for grant of lease of the land belonging to the State, Lease Case No.34 of 1976 had been registered. Finally, in the said case, the order was passed for grant of Patta in respect of the land in question in favour of the Plaintiff. The Authority then in the year 1996 initiated action for cancellation of said Patta and the Plaintiff being provided with the opportunity of showing cause and hearing, the Authority, i.e, the Tahasildar has recommended the matter to the Superior Authority for cancellation of said lease and

consequently, the Patta. At this stage, the Plaintiff has filed the suit seeking the reliefs as already stated.

Section-3B of the OGLS act empowers any officer authorized under clause (e) of section 3 for resumption of Government land and imposition of penalty on the person in whose favour the Government land has been settled. Section 7-B of the said Act bars the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of any matter which any officer or authority is empowered by or under the Act to determine. It further provides that no injunction shall be granted by any Civil Court in respect of any action taken or to be taken in exercise of any power conferred by or under the Act. The provision contained in sub-section 3 of section 7 of the Act also empowers the Collector to examine any records on his own motion or otherwise for the purpose of himself that any such order was passed under a mistaken of fact or owing to a misrepresentation or on account of any material irregularity and procedure and he then may pass such order thereon as he thinks fit.

The Plaintiff thus having not waited till the final order, has come forward to file the suit simply stating that initiation of such action does not have sanction of law. In view of the clear provision, as aforestated, in my view, the Trial Court, on going through the averments taken in the plaint further viewing the reliefs sought for by the Plaintiff, was absolutely right in dismissing the suit, which is found to have been erroneously set aside by the First Appellate Court by taking a view which appears to be indefensible.

With the above answer to the substantial questions of law as at A and C; this Court feels no further necessity to answer the other substantial questions of law.

10. In the result, the Appeal stands allowed and the judgment and decree passed by the First Appellate Court are hereby set aside and those passed by the Trial Court are restored. There shall, however, be no order as to cost.

***(D. Dash),
Judge.***



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